

HOUSE BILL REPORT

SSB 5126

As Reported by House Committee On:
State Government Operations & Accountability
Appropriations

Title: An act relating to developing policies, procedures, and mandatory training programs on sexual harassment for all state employees.

Brief Description: Developing policies, procedures, and mandatory training programs on sexual harassment for all state employees.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Kastama, Roach and Keiser).

Brief History:

Committee Activity:

State Government Operations & Accountability: 2/15/06, 2/17/06 [DPA];
Appropriations: 2/27/06 [DPA(SGOA)].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- Requires the Department of Personnel to develop policies, procedures, and mandatory training programs pertaining to sexual harassment for all state employees.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Miloscia and Sump.

Staff: Kasa Tupua (786-7291).

Background:

Sexual harassment is a form of sex discrimination and is an unlawful employment practice under the federal Civil Rights Act of 1964 and the Washington State Law Against Discrimination (WLAD).

The federal law applies to employers with 15 or more employees, including federal, state and local governments, employment agencies, and labor organizations, and prohibits unwelcome

sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The provisions of the WLAD apply to employers with eight or more employees. Under the WLAD, two types of sex discrimination claims are recognized: the quid pro quo sexual harassment claim, where the employer requires sexual consideration from the employee for job benefits, and the hostile work environment claim. The four elements of a prima facie hostile work environment claim are: (1) the harassment was unwelcome; (2) the harassment was because of sex; (3) the harassment affected the terms and conditions of employment; and (4) the harassment is imputable to the employer. The third element requires that the harassment be "sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment[,] . . . to be determined with regard to the totality of the circumstances." *Glasgow v. Ga-Pac. Corp.*, 103 Wn.2d 401, 406-07, 693 P.2d 708 (1985).

By executive order (order) issued in 1989, the state's policy pertaining to sexual harassment was established. This policy requires the state to provide and maintain a working environment free from sexual harassment for its employees and all citizens participating in state programs.

The order directs each state agency to:

- maintain policy statements on sexual harassment;
- respond promptly and effectively to sexual harassment concerns;
- conduct training and education for all employees to prevent and eliminate sexual harassment in the workplace; and
- inform employees of their right to file a complaint with the Washington State Human Rights Commission or with the Federal Equal Employment Opportunity Commission.

The Department of Personnel (Department) must incorporate into its Affirmative Action Program Guidelines criteria addressing compliance with the order.

Summary of Amended Bill:

The Director of the Department is directed to adopt rules that develop policies, procedures, and mandatory training programs on sexual harassment for all state employees. State agencies are required to absorb the cost of the training programs.

Amended Bill Compared to Substitute Bill:

The emergency clause is removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The Department of Personnel is required to develop rules, policies, and training programs on sexual harassment for all state employees. Currently, there are no sexual harassment policies in statute - only an executive order. Executive orders are only effective as long as the Governor chooses to continue them.

It is important to require the Department of Personnel to develop rules and policies for all state agencies and employees on sexual harassment, as the executive order on sexual harassment has not been implemented evenly. There are examples of agencies that provide sexual harassment training only to new employees. It is reasonable to have uniformity across all state agencies, and to use tax payer dollars more efficiently than paying out millions of dollars in sexual harassment lawsuits.

Testimony Against: None.

Persons Testifying: Senator Kohl-Welles.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on State Government Operations & Accountability. Signed by 18 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Clements, Cody, Darneille, Dunshee, Grant, Haigh, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Schual-Berke and P. Sullivan.

Minority Report: Do not pass. Signed by 12 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Armstrong, Bailey, Buri, Chandler, Hinkle, Pearson, Priest, Talcott and Walsh.

Staff: David Pringle (786-7310).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On State Government Operations & Accountability:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: We have the executive order, but also significant amounts in sexual harassment claims being paid, such as the one several years ago at Western State Hospital.

That cost the state over \$2 million. While there are both state and federal laws on sexual harassment, there is no state statute requiring this training for state employees, so this could be incorporated into the training being done because of the executive order. We already have an executive order on sexual harassment, but we do not know what individual agencies are actually doing. There are not likely any additional costs that wouldn't be offset by savings from sexual harassment lawsuits that would be avoided if these training requirements were adopted.

Testimony Against: None.

Persons Testifying: Senator Kohl-Welles, prime sponsor; and Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying: None.